

Form F46 Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	PO Box 1126		
Suburb	Eagle Farm		
State or territory	Queensland	Postcode	4009
Phone number	(07) 3212 1212	Fax number	(07) 3212 1515
Email address	TDeegan@allianceairlines.com.au		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	Alliance Airlines Pty Ltd
Trading name of business	Alliance Airlines
ABN/ACN	107 165 980
Contact person	Tracie Deegan

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. There is no requirement to have a representative.

Yes—Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person	Jill Hignett		
Organisation	HR Law		
Postal address	GPO Box 1572		
Suburb	Brisbane		
State or territory	Qld	Postcode	4001
Phone number	(07) 3211 3350	Fax number	
Email address	j.hignett@hrlawyers.com.au		

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

Air Pilots Award 2010 (MA000046).

1.2 What industry is the employer in?

Aviation Industry.

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
- a modern award
- a determination revoking a modern award

2.2 What are the details of your application?

Variation to clause 13 of the exposure draft Air Pilots Award 2016 (clause 16 of the current Air Pilots Award 2010) as follows:

“13. Training—classifications

- 13.1** *This clause does not apply to employees engaged in aerial application operations.*
- 13.2** *Where employment has commenced and the employer and not a regulatory body or otherwise requires a pilot to undertake additional training to reach and maintain minimum qualifications for a particular aircraft type in accordance with this award, other than the aircraft type for which the pilot was employed, all facilities and other costs associated with attaining and maintaining those qualifications will be the responsibility of the employer.*
- 13.3** *Where a pilot fails to reach or maintain a standard required the pilot will receive further re-training and a subsequent check. The pilot may elect to have a different check captain on the second occasion.*
- 13.4** *Where a pilot fails the second check in clause 13.3, the pilot may, where practicable, be reclassified to the previous or a mutually agreed equivalent position.*
- 13.5** *Where employment commences under this award, the pilot’s service required to be undertaken by the prospective employer, and not a regulatory body or otherwise, prior to commencing employment, during a training period will be recognised and any training required to be conducted, by the prospective employer and not a regulatory body or otherwise, at the pilot’s cost will be reimbursed to the pilot.*
- 13.6** *Nothing in this clause 13 prevents the pilot and employer entering into an individual return of service or training bond.”*

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



1. This application is made pursuant to sections 157 and 160 of the *Fair Work Act 2009* (“the Act”). The application is to remove ambiguity or uncertainty or in the alternative, to amend the terms of the Award on the basis it is necessary to achieve the modern awards objective.
2. Section 160 of ~~the *Fair Work Act*~~ (“the Act”) states:
“Variation of modern award to remove ambiguity or uncertainty or correct error
 - (1) *The FWC may make a determination varying a modern award to remove an ambiguity or uncertainty or to correct an error.*
 - (2) *The FWC may make the determination:*
 - (a) *on its own initiative; or*
 - (b) *on application by an employer, employee, organisation or outworker entity that is covered by the modern award; or*
 - (c) *on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or*
 - (d) *if the modern award includes outworker terms--on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the outworker terms relate.”*
3. The amendments set out in 2.2 seek for the Fair Work Commission to make a determination varying the modern award in accordance with section 160(1) of the Act by the addition of words which clarify the intention and interpretation of the award provision. In the alternative, the amendments set out in clause 2.2:

 - (a) are substantive amendments to the modern award; and
 - (b) seek for the Fair Work Commission to make a determination under section 157 of the Act varying the modern award.


4. Section 157 of the Act states:
“157 FWC may vary etc. modern awards if necessary to achieve modern awards objective
 - (1) The FWC may:
 - (a) make a determination varying a modern award, otherwise than to vary modern award minimum wages or to vary a default fund term of the award; or
 - (b) make a modern award; or
 - (c) make a determination revoking a modern award;if the FWC is satisfied that making the determination or modern award is necessary to achieve the modern awards objective.”
5. The amendments ~~set~~ sought are consistent with and necessary to achieve the modern awards objective as defined by section 134 of the Act and seek ~~s~~ to maintain the status quo that exists ~~under the Award and~~ in the Aviation Industry (details of which have been ~~will be~~ provided in submissions ~~to be~~ filed in accordance with Order 2 and Order 3 of the Fair Work Commission Directions dated 18 December 2018) and will be provided in amendments which will be made to those submissions.
- ~~3.6.~~ The Applicant **attaches** a statement of Tracie Deegan, General Manager, HR & Development of the Applicant to this application in further support of the amendment sought to clause 13.6.

Attach additional pages, if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Jill Hignett
Date	5 July 2019
Capacity/Position	Solicitor for the Applicant



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Four Yearly Review of Modern Awards - Air Pilots Award 2010

Statement of: Tracie Deegan

Address: 81 Pandanus Avenue, Eagle Farm QLD 4009

Occupation: General Manager, HR & Development

STATEMENT OF TRACIE DEEGAN

I, Tracie Deegan, General Manager, HR & Development, 81 Pandanus Avenue, Eagle Farm QLD 4009, state as follows:

1. I am the General Manager, HR & Development of Alliance Airlines Pty Ltd ("Alliance Airlines").
2. I have been employed by Alliance Airlines in this role since 2008.
3. Throughout my time working for Alliance and since its inception in 2002, training bonds have always been entered into between Alliance and its Pilots relating to both endorsement and upgrade training.

Training Bonds and Clause 16 of the Air Pilots Award 2010

4. It has been the usual course that training bonds be entered into with Pilots on terms that are agreed between the individual pilot and Alliance. There have never been any issues raised about the interaction of training bonds with the Air Pilots Award 2010 ("Award") or any enterprise agreement terms until 2018.
5. During the approval process for three enterprise agreements in 2018, concerns were raised by the Australian Federation of Air Pilots ("AFAP") regarding training bonds and clause 16 of the Award. The enterprise agreements were:
 - (a) *Alliance Airlines Pilots' (F50 Adelaide) Enterprise Agreement 2018;*
 - (b) *Alliance Airlines Pilots' (F100 Adelaide) Enterprise Agreement 2018;* and
 - (c) *Alliance Airlines Pilots' (Brisbane, Townsville and Cairns) Enterprise Agreement 2018.*
6. The position that training bonds are affected by clause 16 of the Award were raised.
7. Specifically, the AFAP submitted in *Alliance Airlines Pilots' (Brisbane, Townsville And Cairns) Enterprise Agreement 2018 [2018] FWCA 4716:*

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“in relation to training that the possible imposition of a training bond for the types of training contemplated in clause 27 of the Agreement is less beneficial than clause 16 of the Award. As clause 16 of the Award requires the employer to be responsible for training costs in certain circumstances the AFAP submits that this gives rise to a BOOT concern”.

8. Similar arguments regarding the interaction of training bonds with clause 16 of the Award were raised by the AFAP in *Application for approval of the Alliance Airlines Pilots’ (F50 Adelaide) Enterprise Agreement 2018* [2019] FWCA 1997 and *Application for approval of the Alliance Airlines Pilots’ (F100 Adelaide) Enterprise Agreement 2018* [2019] FWCA 2906.
9. Commissioners Lee, Platt and McKinnon took different views when considering the interaction of training bonds and clause 16 of the Award.
10. Alliance’s position is that the AFAP’s view cannot be the intention of clause 16 of the Award for the reasons set out in our previous submissions.
11. Training bonds are a minimum condition in the aviation Industry and have existed alongside award conditions for years.
12. Given the position now taken by the AFAP and the differing consideration of the interaction between training bonds and the Award undertaken in the agreement approvals. We believe that the interaction as it applies to clause 16 of the Award needs to be specified. Clause 13.6 makes it clear that clause 16 of the Award does not prevent an employer entering into a training bond which is the status quo.
13. Training bonds are a matter outside the scope of clause 16 of the Award and this is supported by the approval of other enterprise agreements containing similar provisions which have been set out in Alliance previous submissions. That is, training bonds and clause 16 have not been a better off overall test (“BOOT”) issue in previous agreement approvals both for Alliance and many other aviation companies.
14. Training bonds are a necessity. The substantial cost of training and the requisite return of service is the premise behind the need for training bonds. If Alliance were only allowed to enter into training bonds in certain circumstances and a Pilot was allowed to leave the employ of Alliance after Alliance had paid for the costs of their training and they had not returned service, this would result in significant financial and employment costs to the business and would change the way Alliance and other airlines need to operate.
15. For example, the average cost of training a captain is approximately \$70,000.00 to \$100,000.00. If a training bond was only allowed in circumstances where the pilot had earned the Award wage plus \$70,000.00 to \$100,000.00, a training bond would not be enforceable likely in the first two years of employment, because a pilot would not have

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earnt the Award wage plus \$70,000.00 to \$100,000.00. This means a captain could take up employment, undertake \$70,000.00 to \$100,000.00 of training and then resign without any return of service, leaving Alliance in a significant detriment and having to train another pilot at the same cost.

16. Such a financial strain on Alliance for training costs without the return of service would put a huge financial burden on the employment costs of Alliance and would have a significant effect on the performance and competitiveness of the aviation industry in Australia. It would render a situation where Alliance would have to find another way for pilots to be engaged, such as hiring pilots already trained.
17. Our previous submissions and the amended submissions which will be filed do/will further state the reasons why clause 13.6 needs to be inserted.

Tracie Deegan

Date:

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